

OPINION
67-28

September 18, 1967 (OPINION)

Mr. Raymond R. Rund

States Attorney

Steele County

RE: Cities - Official Newspaper - Legal Notices

This is in reply to your letter of September 7, 1967, with regard to publication of official notices and legal publications of cities.

You call our attention to section 40-01-09 of the North Dakota Century Code and section 40-01-11 of the 1967 Supplement to the North Dakota Century Code, which provide as follows:

40-01-09. OFFICIAL NEWSPAPER OF MUNICIPALITY. The official newspaper as chosen by the electors of the county shall be the official newspaper of the municipality in which it is published, and such official notices and legal publications as the municipality is required to publish by law shall be published therein. In municipalities where the official newspaper is not published, the governing body of the municipality, annually by resolution at its first meeting in May, or as soon thereafter as practicable, shall designate a newspaper published in the municipality, if there is one, as the official newspaper of the municipality, including park districts therein, for the publication of notices and legal publications, including legal notices and official statements of the school districts embracing the municipality."

40-01-11. PUBLICATION BY A CITY OR PARK DISTRICT IN WHICH NO OFFICIAL NEWSPAPER IS PUBLISHED. Whenever any ordinance, notice, or other instrument is required by the provisions of this Code to be published in a city or park district in which no official newspaper is published, such publication may be made or such notice given by publication of such ordinance, notice, or other instrument in the official county newspaper. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper printed in an adjoining county and having a general circulation in said county." Your questions are stated as follows:

1. Is it still possible for those cities having no newspaper printed within their boundaries to still post the official notices and legal publications in five public places within such municipality?
2. If your answer to the above is in the negative, then tell me, as to whether or not these official notices and legal publications must be published in the official newspaper of the county wherein such municipality is located?

3. Is it possible for a city to designate, by resolution, a newspaper printed within its county, but not the official county newspaper, as that city's official newspaper, under Section 40-01-09, and publish its legal notices and legal publications in such designated newspaper instead of the official county newspaper of the county?
4. Could such city, having no newspaper printed within its boundary, disregard its own county official newspaper and designate a newspaper outside of its county to be its official newspaper under Section 40-01-09? By this I mean, of course an adjoining county, which has a city close to this small town that has no newspaper, though that larger city's newspaper in the adjoining county is not the official newspaper, of that county."

In reply to your first question, we know of no legal objection to posting of notices, except possibly with regard to expenditure of funds or efforts of employees for unnecessary work under the present law, although it does appear that same can no longer substitute for publishing in a proper newspaper.

In reply to your second question, there is perhaps a problem of the meaning of the word "publish" in these statutory provisions. The context of the statutes makes it a bit difficult to apply a definition of such word as broad as to include everywhere the newspaper is made available to the public. For example, the last sentence of the current amendment of Section 40-01-11 refers to counties "in which no newspaper is published" but in which a newspaper printed in an adjoining county has "a general circulation." Again, we note that the statutes use both the word "printed" and the word "published" and it does not necessarily indicate that these words are used as synonyms.

On such basis our answer to your second question must be that these official notices and legal publications must be published in the official newspaper of the county wherein such municipality is located where no newspaper is published in the municipality itself.

While we are not prepared to hold that a newspaper must necessarily be printed in the municipality in order to be "published" there, it is our opinion that it must at least be first made available to the public in that municipality in order to be considered as published in such municipality.

In reply to your third question, it is not possible for a city to designate, by resolution, a newspaper printed within its county, but not the official county newspaper, as the city's official newspaper, under section 40-01-09, and publish its legal notices and legal publications in such designated newspaper instead of the official county newspaper of the county, unless such newspaper is "published" within the boundaries of that city.

In reply to your fourth question, same must be answered in the negative.

HELGI JOHANNESON

Attorney General